

## § 1434.21

excess shall be paid to the producer or, if applicable, to any secured creditor of the producer.

### § 1434.21 Loan deficiency payments.

(a) Loan deficiency payments shall be available for 2008 through 2012 crop honey.

(b) In order to be eligible to receive loan deficiency payment for a crop of honey, the producer must:

(1) Comply with all of the program requirements to be eligible to obtain loan in accordance with this part;

(2) Agree to forego obtaining such loans;

(3) Submitted a request for a honey Loan deficiency payment on the form as CCC prescribes.

(4) Comply with §§ 1434.7 and 1434.8 or provide evidence of production as determined by CCC for such quantity; and

(5) Otherwise comply with all program requirements.

(c) The loan deficiency payment rate for a crop shall be the amount by which the marketing assistance loan rate exceeds the rate at which CCC has announced that producers may repay their marketing assistance loan in accordance with § 1434.18.

(d) The loan deficiency payment applicable to a crop of honey shall be computed by multiplying the loan deficiency payment rate, as determined in accordance with paragraph (e) of this section, by the quantity of honey the producer is eligible to pledge as collateral for a price support loan for which a loan deficiency payment is required.

(e) Notwithstanding any provisions in this section, loan deficiency payments may be based on 100 percent of the net quantity specified on acceptable evidence of disposition of the honey certified as eligible for a loan deficiency payment if CCC determines that such quantity represented the quantity for the number of containers of honey initially certified for the loan deficiency payment when the payment was made.

(f) When applying for an individual loan deficiency payment, each producer agrees:

(1) The producer will provide correct, accurate, and truthful certifications and representations of the loan quan-

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tity and all other matters of fact and interest when submitting a request for a honey loan deficiency payment; and

(2) That violation of the terms and conditions of this part will cause harm or damage to CCC in that funds may be disbursed to the producer for a LDP quantity that is not actually in existence or for a quantity for which the producer is not eligible.

(g) For the purposes of this section, violations include any failure to comply with this part or the loan agreement, including but not limited to any incorrect certification.

[66 FR 15177, Mar. 15, 2001, as amended at 67 FR 64481, Oct. 18, 2002; 74 FR 15657, Apr. 7, 2009]

### § 1434.22 Death, incompetency, or disappearance; appeals; other loan provisions.

(a) In the case of death, incompetency, or disappearance of any producer who is entitled to the payment of any sum in settlement of a loan, payment shall, upon proper application to the county office that made the loan, be made to the persons who would be entitled to such producer's share under the regulations contained in part 707 of this title. Applications for loans may be made upon application of a representative of the producer as allowed under standard practice for farm programs.

(b) Appeals of adverse decisions made under this part shall be subject to the provisions of 7 CFR parts 11 and 780.

[66 FR 15177, Mar. 15, 2001, as amended at 67 FR 64481, Oct. 18, 2002. Redesignated at 74 FR 15657, Apr. 7, 2009]

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AUTHORITY: 7 U.S.C. 1359aa-1359jj and 7272; 15 U.S.C. 714b and 714c

SOURCE: 67 FR 54928, Aug. 26, 2002, unless otherwise noted.

## Subpart A—General Provisions

### § 1435.1 Applicability.

These regulations set forth the terms and conditions for the 2008 through 2012 crop years under which the Commodity Credit Corporation (CCC) will:

- (a) Make loans and enter agreements with eligible processors,
- (b) Collect data from sugarcane processors, sugar beet processors, cane refiners, and importers of sugar, syrup, and molasses,
- (c) Administer sugar marketing allotments, and
- (d) Administer an inventory disposition program to sell CCC inventory to bioenergy producers and exchange CCC inventory for processor reductions in production or certificates of quota entry.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15363, Apr. 6, 2009]

### § 1435.2 Definitions.

The definitions set forth in this section are applicable for all purposes of program administration. Terms defined in part 718 of this title are also applicable.

*Ability to market* means, for purposes of determining the State cane sugar allotments and sugarcane processor allocations for Hawaii and Puerto Rico, the estimated quantity of sugar, raw value, as CCC determines, that will be produced in the cane State or by the sugarcane processor, as appropriate, during the applicable crop year; for determining the remaining State cane sugar allotments, the highest single year of sugar production for the State during the 1999 through 2003 crop years; for determining the sugarcane processor allocations for mainland cane States other than Louisiana, the highest single year of sugar production for the processor during the 1999 through 2003 crop years; and, for determining the sugarcane processor allocations for Louisiana, the simple average of two amounts for each processor, including:

- (1) The production of sugar for the processor, stated in short tons, raw value, during Crop Year 2003, as determined by CCC; and
- (2) The simple average of 3 years of the processor's production of sugar,

stated in short tons, raw value, from among the 1999 through 2003 crop years, excluding the year in which the production was the highest and the year in which the production was the lowest. With respect to the 2003 crop year, each processor's production shall be the same as determined under paragraph (1).

*Allocation* means the division of the beet sugar allotment among the sugar beet processors in the United States and the division of each State's cane sugar allotment among the State's sugarcane processors.

*Beet sugar* means sugar that is processed directly or indirectly from sugar beets, sugar beet molasses, or in-process beet sugar, whether produced domestically or imported.

*Beet sugar allotment* means that portion of the overall allotment quantity allocated to sugar beet processors.

*CCC* means the Commodity Credit Corporation.

*Cane sugar* means sugar derived directly or indirectly from sugarcane produced in the United States, including sugar produced from sugarcane molasses.

*Cane sugar allotment* means that portion of the overall allotment quantity allocated to sugarcane processors.

*Cane sugar refiner* means any person in the U.S. Customs Territory that refines raw cane sugar through affination or defecation, clarification, and further purification by absorption or crystallization.

*Carry-in stocks* means inventories of sugar owned by sugar beet processors, sugarcane processors, cane sugar refiners, and CCC and physically located in the United States at the beginning of the fiscal year.

*Crop year* means the period from October 1 through September 30, inclusive, and is identified by the year in which the crop year begins. For example, the 2002 crop year begins on October 1, 2002. The 2002 crop of sugar beets or sugar cane means domestically grown sugar beets or sugar cane processed during the 2002 crop year. The 2002 crop of sugar means sugar processed from domestically-grown sugar beets or sugarcane during the 2002 crop year. Sugar from de-sugaring molasses

is considered to be from the crop year the de-sugaring occurred.

*Deputy Administrator* means the Deputy Administrator, Farm Programs, FSA, or designee.

*Deficit* means the quantity of sugar covered by an allocation of an allotment that CCC estimates a sugar beet processor or sugarcane processor will be unable to market during the crop year in which marketing allotments are in effect.

*Edible molasses* means molasses that is not to be further refined or improved in quality and that is to be distributed for human consumption, either directly or in molasses-containing products.

*Edible syrups* means syrups that are not to be further refined or improved in quality and that are to be distributed for human consumption, either directly or in syrup-containing products.

*Executive Vice President, CCC*, means the Executive Vice President, CCC, or designee.

*Facility* means a factory, mill, or plant.

*Farm* means that entity as defined in §718 of this title, except that when a State is subject to proportionate shares, producers will not be allowed to have farms reconstituted across State lines even if the farm land is adjoining.

*Fiscal year* means that year beginning October 1 and ending the following September 30.

*FSA* means Farm Service Agency.

*Human consumption* means sugar for use in human food, beverages, or similar products.

*Imports* means sugar originating in foreign countries or areas and entered, or to be entered, into the United States customs territory.

*In-process beet sugar* means the intermediate sugar-containing product, as CCC determines, produced from processing sugar beets. Like sugar beets, it is considered an input into the production of sugar regardless of whether it is produced domestically or imported.

*In-process cane sugar* means the intermediate sugar-containing product, as CCC determines, produced from the processing of sugarcane. It is not raw sugar, nor is it suitable for direct human consumption.

*Market or marketing* means the transfer of title associated with the sale or

other disposition of sugar for human consumption in United States commerce. A marketing also includes a sale of sugar under the Feedstock Flexibility Program, the forfeiture of sugar loan collateral under the Sugar Loan Program, exportation of sugar from the United States Customs Territory eligible to receive credits under reexport programs for refined sugar or sugar-containing products administered by the Foreign Agricultural Service, or the sale of sugar eligible to receive credit for the production of polyhydric alcohol under the Polyhydric Alcohol program (see part 1530 of this title) administered by the Foreign Agricultural Service, and for any integrated processor and refiner, the movement of raw cane sugar into the refining process.

*Nonrecourse loan* means a loan for which eligible sugar offered as loan collateral may be forfeited to CCC, at loan maturity, in satisfaction of loan indebtedness.

*Overall allotment quantity* means, on a national basis, the total quantity of domestically produced sugar, raw value, processed from sugarcane, sugar beets or in-process beet sugar (whether the sugar beets or in-process beet sugar are produced domestically or imported), and the raw value equivalent of sugar in sugar products, that is permitted to be marketed by processors, during a crop year or other period in which marketing allotments are in effect.

*Past marketings* means, for purposes of determining State cane sugar allotments and sugarcane processor allocations for States other than Louisiana, the average of the 2 highest years of sugar production during the 1996 through 2000 crop years; for Louisiana sugarcane processor allocations, the average of the 2 highest years of sugar production during the 1997 through 2001 crop years.

*Past processing* means, for determining Hawaii and Puerto Rico's allotments, the 3-year average of the 1998 through 2000 crop years; and for determining the remaining cane State allotments, the 3 crop years with the greatest production (in the States collectively) during the 1991 through 2000 crop years. Past processing, for deter-

mining the sugarcane processor allocation for States other than Louisiana, means the average of the 3 highest years of production during the 1996 through 2000 crop years; and, for determining sugarcane processor allocations in Louisiana, the average of the 2 highest years of sugar production during the 1997 through 2001 crop years.

*Per-acre yield goal* means a State's yield level that is established at not less than the State's two highest average per-acre yield years from among the 1999 through 2001 crop years as CCC determines to ensure an adequate net return per pound to State producers.

*Proportionate share* means the total acreage from which a producer may harvest sugarcane for sugar or seed during any crop year or other period in which marketing allotments are in effect.

*Proportionate share State* means a State with an established allotment and more than 250 sugarcane producers in the State, other than Puerto Rico.

*Raw sugar* means any sugar that is to be further refined or improved in quality other than in-process sugar.

*Raw value* of any quantity of sugar means its equivalent in terms of raw sugar testing 96 sugar degrees, as determined by a polarimetric test performed under procedures recognized by the International Commission for Uniform Methods of Sugar Analysis (ICUMSA). Direct-consumption sugar derived from sugar beets and testing 92 or more sugar degrees by the polariscope shall be translated into terms of raw value by multiplying the actual number of pounds of such sugar by 1.07. Sugar derived from sugarcane and testing 92 sugar degrees or more by the polariscope shall be translated into terms of raw value in the following manner: raw value =  $\{[(\text{actual degree of polarization} - 92) \times 0.0175] + 0.93\} \times \text{actual weight}$ . For sugar testing less than 92 sugar degrees by the polariscope, derive raw value by dividing the number of pounds of the "total sugar content" (i.e., the sum of the sucrose and invert sugars) thereof by 0.972.

*Reasonable carryover stocks* means desirable inventories of sugar owned by sugar beet processors, sugarcane processors, cane sugar refiners, and CCC and on hand in the United States at the

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end of the fiscal year, as CCC determines.

*State* means any of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico.

*Sugar* means any grade or type of saccharine product derived, directly or indirectly, from sugarcane, sugar beets, sugarcane molasses, sugar beet molasses or in-process beet sugar whether domestically produced or imported and consisting of, or containing, sucrose or invert sugar, including raw sugar, refined crystalline sugar, edible molasses, edible cane syrup, liquid sugar, and in-process cane sugar.

*Sugar beet processor* means a person who commercially produces sugar, directly or indirectly, from sugar beets, sugar beet molasses, or in-process beet sugar.

*Sugar products* means products for human consumption, other than sugar, that contain 50 percent or more of sucrose, on a dry weight basis, and that are marketed by a sugar beet processor or sugarcane processor. In determining sugar subject to marketing allocations, only the sugar content of such products will be counted against the allocation.

*Sugarcane processor* means a person who commercially produces sugar, directly or indirectly, from sugarcane, has a viable processing facility, and a supply of sugarcane for the applicable allotment year.

*Ton* means a short ton or 2,000 pounds.

*United States* means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

*U.S. market value* means, for sugarcane, the daily New York Board of Trade No. 14 contract price for raw sugar, or other price, as determined by CCC; for sugar beets, the Midwest refined beet sugar price published in Milling and Baking News, or other price, as determined by CCC.

*USDA* means the United States Department of Agriculture.

[67 FR 54928, Aug. 26, 2002, as amended at 69 FR 55062, Sept. 13, 2004; 74 FR 15363, Apr. 6, 2009]

### § 1435.3 Maintenance of records.

(a) Each sugar beet processor, sugarcane processor, importer of sugars, syr-

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ups and molasses, and cane sugar refiner or any person having custody of records required by CCC to operate the sugar program must retain such books, records, accounts, and other written or electronic data for not less than 3 years from the date:

(1) A loan is disbursed under subpart B;

(2) Market data are reported to CCC under subpart C of this part; and

(3) Marketings are conducted under marketing allotments under subpart D of this part.

(b) [Reserved]

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15364, Apr. 6, 2009]

### § 1435.4 Administration.

(a) This program shall be administered under the general supervision of the Executive Vice President, CCC, and may be carried out in the field by FSA State and county committees.

(b) State and county committees, and representatives and employees thereof, may not modify or waive any of the provisions of part 1435.

(c) The State committee shall take any action required by this part that the county committee has not taken. The State committee shall also:

(1) Correct, or require a county committee to correct, a county committee action not under this part; or

(2) Require a county committee to withhold taking any action not under this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, from determining any question arising under the program or from reversing or modifying any State or county committee determination.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such requirements do not adversely affect program operation.

(f) A CCC representative may execute loans and related documents only under the terms and conditions CCC determines and announces. Any such document not executed under such terms

and conditions, including any purported execution before the CCC-authorized date, shall be null and void.

#### § 1435.5 Other regulations

The following are applicable to this part:

(a) Part 707—Payments due persons who have died, disappeared, or have been declared incompetent.

(b) Part 718—Provisions applicable to multiple programs.

(c) Part 780—Appeal regulations.

(d) Part 1403—Debt settlement policies and procedures.

(e) Part 1405—Loans, purchases, and other operations.

### Subpart B—Sugar Loan Program

#### § 1435.100 Applicability.

(a) The regulations of this subpart set forth the terms and conditions under which CCC will make non-recourse loans available to eligible processors. Additional terms and conditions are set forth in the loan application and note and security agreement that a processor must execute to receive a loan.

(b) Loan rates used in administering the loan program are available in FSA State and county offices.

(c) Loans shall not be available for sugar produced from imported sugar beets, sugarcane, molasses, syrups and in-process sugar.

#### § 1435.101 Loan rates.

(a) The national average loan rate for raw cane sugar produced from domestically grown sugarcane is: 18 cents per pound for the 2008 crop year; 18.25 cents per pound for the 2009 crop year; 18.50 cents per pound for the 2010 crop year; 18.75 cents per pound for the 2011 crop year; and 18.75 cents per pound for the 2012 crop year.

(b) The national average loan rate for refined beet sugar from domestically grown sugar beets is: 22.90 cents per pound for the 2008 crop year; and a rate equal to 128.5 percent of the loan rate per pound of raw cane sugar for each of the crop years 2009 through 2012.

(c) Loan rates for eligible sugar are adjusted to reflect the processing location of the sugar offered as loan collateral.

(d) Loan rates for eligible in-process sugar shall equal 80 percent of the loan rate applicable to raw cane sugar or beet sugar on the basis of the expected production of raw sugar or beet sugar from the in-process sugar or syrups.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15364, Apr. 6, 2009]

#### § 1435.102 Eligibility requirements.

(a) An eligible producer is the owner of a portion or all of the domestically-grown sugar beets or sugarcane, including share rent landowners, at both the time of harvest and the time of delivery to the processor, except those producers determined to be ineligible as a result of the regulations governing highly erodible land and wetland conservation found at 7 CFR part 12, regulations governing crop insurance at 7 CFR part 400, or regulations governing controlled substance violations at 7 CFR part 718.

(b) In addition to all other provisions of this part, a sugar beet or sugarcane processor is eligible for loans only if the processor has agreed to all the terms and conditions in the loan application, and has executed a note and security agreement, and storage agreement with CCC. No loan proceeds will be distributed by CCC before CCC's approval of the note and security agreement and the CCC storage agreement.

(c) Sugar pledged as collateral during the crop year:

(1) May not exceed the quantity derived from processing domestically-grown sugar beets or sugarcane from eligible producers during the applicable crop year;

(2) Must be processed and owned by the eligible processor and stored in a CCC-approved warehouse;

(3) May not have been processed from imported sugarcane, sugar beets in-process sugars, or molasses;

(4) Must have been processed in the United States; and

(5) Must have processor certification in the loan application that the sugar or in-process sugar syrups are eligible and available to be pledged as collateral.

(d) Sugar and in-process sugar must meet the following minimum quality requirements to be eligible to be pledged as loan collateral:

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(1) Refined beet sugar to be pledged as loan collateral must be:

- (i) Dry and free flowing;
- (ii) Free of excessive sediment; and
- (iii) Free of any objectionable color, flavor, odor, or other characteristic that would impair its merchantability or that would impair or prevent its use for normal commercial purposes.

(2) Raw cane sugar to be pledged as loan collateral must be:

- (i) Of reasonable grain size; and
- (ii) Free of objectionable color, flavor, odor, moisture or other characteristic that would impair its merchantability or that would impair or prevent its use for normal refining and commercial purposes.

(3) Edible sugarcane syrup or edible molasses must be free from any objectionable color, flavor, odor, or other characteristic that would impair the merchantability of such syrup or molasses or would impair or prevent the use of such syrup or molasses for normal commercial purposes.

(4) In-process sugar must be of at least the minimum quality expected to commercially yield raw cane sugar or refined beet sugar, as determined by CCC.

(e) The loan collateral must be stored in a CCC-approved warehouse as described in 7 CFR part 1423.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15364, Apr. 6, 2009]

**§ 1435.103 Availability, disbursement, and maturity of loans.**

(a) Before obtaining a loan, a processor must:

(1) File a loan application, as CCC prescribes, no earlier than October 1 and no later than September 30 of the applicable crop year, with the State committee of the State where such processor is headquartered, or with a county committee designated by the State committee.

(2) Execute a note and security agreement, and storage agreement with CCC;

(3) Provide quantity and quality information as prescribed by CCC of the commodity to be pledged as collateral;

(4) Pay CCC a loan service fee, as determined by CCC, for the disbursement of each loan.

(5) If there are any liens or encumbrances on sugar or in-process sugar pledged as loan collateral, obtain waivers that fully protect CCC's interest even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the sugar after loan approval; and

(6) Agree to reimburse CCC for any costs incurred as a result of the failure of the processor to obtain the waivers specified in subparagraph (5).

(b) No loan proceeds may be disbursed until the sugar and in-process sugar have actually been produced and are otherwise established as being eligible to be pledged as loan collateral.

(c)(1) A processor may, within the loan availability period, repledge as collateral sugar that previously served as loan collateral for a repaid loan. In making application for such a loan, the processor shall:

(i) Specify that the loan collateral should be treated as a quantity of eligible sugar that previously served as loan collateral for a repaid loan; and

(ii) Designate the loan to which the reoffered loan collateral was originally pledged.

(2) The subsequent loan shall have the same maturity date as the original loan.

(3) Loan collateral repledged that was previously redeemed from CCC is not included in determining the total quantity of sugar on which loans have been obtained for purposes of § 1435.102.

(d) Raw cane sugar loan disbursements shall be made without regard to the actual polarity or quality factors of the sugar pledged as loan collateral but shall be made on the assumption that the polarity of such sugar is 96 degrees by the polariscope.

(e)(1) Loans will mature at the earlier of:

(i) the end of the 9-month period beginning on the 1st day of the first month after the month in which the loan is made; or

(ii) September 30 following disbursement of the loan.

(2) CCC may accelerate loan maturity dates under § 1435.105(h).

(f) Processors receiving loans in July, August, or September may repledge the

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sugar as collateral for a supplemental loan. Such supplemental loan must:

(1) Be requested by the processor during the following October;

(2) Be made at the loan rate in effect at the time the first loan was made; and

(3) Mature in 9 months less the number of months that the first loan was in effect.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15364, Apr. 6, 2009]

### § 1435.104 Loan maintenance.

(a) All processors receiving loans shall:

(1) Abide by the terms and conditions of the loan application, note and security agreement and storage agreement;

(2) Pay interest on the principal at a rate determined in part 1405 of this chapter.

(b) The security interests CCC obtains as a result of the execution of security agreements by sugarcane and sugar beet processors shall be superior to all statutory and common law liens on raw cane sugar, refined beet sugar, and in-process sugar for the producers of sugarcane and sugar beets and all prior recorded and unrecorded liens on the crops of sugarcane and sugar beets from which the sugar was derived.

(c) A processor receiving a loan under this part shall pay all eligible producers who have delivered or will deliver sugar beets or sugarcane to such processors for processing not less than the minimum payment levels CCC specifies for the applicable crop year.

(1) In the case of sugar beets, the minimum payment shall not exceed the rate of payment provided for under the applicable contract between a sugar beet producer and a sugar beet processor.

(2) In the case of sugarcane, CCC will annually determine and announce the annual grower minimum payment.

(3) Processors are ineligible for loans for the crop year following their failure to meet the required minimum grower payment.

(d)(1) A processor shall maintain eligible sugar or in-process sugar of sufficient quality and quantity as collateral to satisfy the processor's loan indebtedness to CCC. CCC shall not assume

any loss in quantity or quality of the loan collateral.

(2) The processor is responsible for storage costs through the loan maturity date or title transfer to CCC, whichever occurs later.

(3) Sugar and in-process sugar pledged as loan collateral need not be stored identity preserved.

(4) When the proceeds of the sale of loan collateral are needed to repay all or part of a sugar loan, the processor may request and obtain prior written approval from the loan making office by executing a loan collateral release request, as prescribed by CCC, to remove a specified quantity of the loan collateral from storage for the purpose of delivering it to a buyer before loan repayment. Any such approval shall be subject to the terms and conditions set forth in the applicable form. The loan making office shall not approve such a request unless the buyer of the sugar agrees to pay CCC an amount necessary to satisfy the processor's loan indebtedness regarding collateral being sold. Any such approval shall not:

(i) Constitute a release of CCC's security interest in the loan collateral; or

(ii) Relieve the processor of liability for the full amount of the loan indebtedness, including interest.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15364, Apr. 6, 2009]

### § 1435.105 Loan settlement and foreclosure.

(a) A processor may, any time before loan maturity, redeem all or any part of the loan collateral by paying CCC the applicable principal and interest.

(b) Forfeiture of sugar loan collateral will be accepted as payment in full of the principal and interest due under a nonrecourse loan, subject to applicable premiums and discounts based on the difference between specifications reported on the sugar loan certification report and actual loadout characteristics.

(c)(1) Forfeiture of in-process sugar serving as loan collateral will be accepted as payment in full of principal and interest if the processor converts the in-process sugar into raw cane



sugar or refined beet sugar of acceptable grade and quality for sugar eligible for loans within 1 month of loan maturity.

(2) The in-process sugar must be fully processed into raw cane sugar or refined beet sugar, before the processor shall transfer the sugar to CCC.

(3) On transfer of the sugar, CCC shall make a payment to the processor in an amount equal to the amount obtained by multiplying the difference between the loan rate for raw cane sugar or refined beet sugar, as appropriate, and the in-process loan rate the processor received by the quantity of sugar transferred to CCC. The loan agreement shall specify the quantity of sugar that can be forfeited to CCC.

(d) If the processor does not forfeit the collateral, but instead further processes the in-process sugar into raw cane sugar or refined beet sugar and repays the loan on the in-process sugar;

(1) the processor may obtain a loan for the raw cane sugar or refined beet sugar, as appropriate, and

(2) the term of a loan made under this subsection for a quantity of in-process sugar, when combined with the term of a loan made for the raw cane sugar or refined beet sugar derived from the in-process sugar, may not exceed 9 months.

(e) CCC shall not accept delivery of sugar in settlement of a nonrecourse loan in excess of the quantity of sugar that is shown on the note and security agreement minus any quantity that was redeemed or released for removal under this section.

(f) If the processor does not redeem any of the nonrecourse loan collateral, title to the unredeemed nonrecourse loan collateral as described in the note and security agreement will, without further CCC or processor action transfer to CCC in-store at the CCC-approved warehouse at 12 a.m. the next business day following the maturity date of the loan. Title, all rights, and interest to such sugar shall immediately vest in CCC.

(g) The value of the settlement of loans shall be made by CCC according to the CCC schedule of premiums and discounts.

(h) CCC may, at any time, accelerate the date for loan repayment including

interest. CCC will give the processor notice of such acceleration at least 15 days in advance of the accelerated loan maturity date.

(i) If a processor's nonrecourse loan indebtedness is not satisfied under the provisions of this section or if forfeited in-process sugar is not converted to raw or refined sugar within the prescribed time:

(1) Interest on the processor's indebtedness shall accrue as specified in part 1403 of this title and shall accrue until the debt is paid;

(2) CCC may, upon notice, with or without removing the collateral from storage, sell such collateral at either a public or private sale;

(3) The processor shall be liable for the deficiency if the net proceeds are less than the amount of principal, interest, and any other charges CCC incurs; and

(4) If the processor forfeits the in-process sugar loan collateral but does not transfer raw or refined sugar of suitable quality to CCC within 1 month, CCC will charge liquidated damages, as provided in the loan agreement.

(j) The CCC rates for the storage of forfeited sugar to approved warehouses for each crop year of 2008 through 2011 will be at least:

(1) For refined sugar, 15 cents per hundredweight of refined sugar per month; and

(2) For raw cane sugar, 10 cents per hundredweight of raw cane sugar per month.

(3) For 2012 and subsequent crop years, rates for the storage of forfeited sugar will revert to those used before June 18, 2008.

(4) For sugar located in space not approved by CCC for storage, the payment rate will be zero until such time as the processor delivers such sugar to a CCC-approved warehouse.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15364, Apr. 6, 2009]

**§ 1435.106 Miscellaneous provisions.**

(a) The regulations governing setoffs and withholding set forth at parts 3 and 1403 of this title are applicable to the program set forth in this subpart.

(b) A producer or processor may obtain reconsideration and review of determinations made under this subpart under the regulations at parts 11 and 780 of this title.

(c) Any false certification, including those made for the purpose of enabling a processor to obtain a loan to which it is not entitled, will subject the person making such certification to liability under applicable Federal civil and criminal statutes.

### **Subpart C—Information Reporting and Recordkeeping Requirements**

#### **§ 1435.200 Information reporting.**

(a) Every sugar beet processor, sugarcane processor, cane sugar refiner, and importer of sugar, syrup, and molasses shall report, by the 20th of each month, on CCC-required forms, its imports and receipts, processing inputs, production, distribution, stocks, and other information necessary to administer the sugar programs. If the 20th of the month falls on a weekend or a Federal holiday, the report shall be due the next business day.

(b) Any processor must, upon CCC's request, provide such information as CCC deems appropriate for determining regional loan rates.

(c) Any processor must, upon CCC's request, provide such information as CCC deems appropriate for determining whether processors of sugarcane or sugar beets will be able to market their respective sugar allocations.

(d) Each sugarcane producer located in Louisiana shall report, in the manner CCC prescribes, sugarcane yields and sugarcane planted acres.

(e) Importers of sugars, syrups, or molasses to be used for domestic human consumption or to be used for the extraction of sugar for domestic human consumption must report such information as CCC requires, including the quantities of the products imported and the sugar content or equivalent of the products.

(f) The Secretary will collect information on the production, consumption, stocks and trade of sugar in Mexico and publish the data in each edition of the World Agricultural Supply and Demand Estimates report.

(g) The Secretary will collect publicly available information on the production, consumption, and trade of high fructose corn syrup in Mexico and publish the data in each edition of the World Agricultural Supply and Demand Estimates report.

(h) Based on the information received under this subsection, the Secretary shall publish on a monthly basis composite data on sugar production, imports, distribution, and stock levels.

(i) By November 20 of each year, sugar beet processors, sugarcane processors, sugarcane refiners, and importers of sugars, syrups, and molasses, as selected by CCC, will submit to CCC a report, as specified by CCC, from an independent Certified Public Accountant that reviews its information submitted to CCC during the previous October 1 through September 30 period.

(j) The sugar information reporting and recordkeeping requirements of this subpart are administered under the general supervision of the Executive Vice President, CCC.

[67 FR 54928, Aug. 26, 2002, as amended at 71 FR 16200, Mar. 31, 2006; 74 FR 15365, Apr. 6, 2009]

#### **§ 1435.201 Civil penalties.**

(a) Any processor, refiner, or importer of sugar, syrup, and molasses who willfully fails or refuses to furnish the information, or who willfully furnishes false data required under § 1435.200(a) through (e), is subject to a civil penalty of no more than \$10,000 for each such violation.

(b) The Controller, CCC, shall assess civil penalties and interest.

(c) Affected processors, refiners, and importers of sugar, syrup, and molasses may request reconsideration of civil penalties by filing a request, within 30 days of receipt of certified written notification from the Controller, CCC, of such assessment of civil penalties, with the Executive Vice President, CCC, Stop 0501, 1400 Independence Ave. SW., Washington, DC 20250-0501.

(d) After reconsideration, affected processors, refiners, or importers of sugar, syrup, and molasses may appeal civil penalties by filing a notice of appeal, within 30 calendar days of receipt of certified written notification from the Executive Vice President, CCC, of

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an affirmation of the assessment of civil penalties, with the National Appeals Division under part 780 of this title.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15365, Apr. 6, 2009]

### Subpart D—Flexible Marketing Allotments For Sugar

#### § 1435.300 Applicability.

(a) This subpart applies to the establishment and allocation of marketing allotments for:

(1) Processor marketings of sugar domestically processed from sugar beets or in-process beet sugar, whether such sugar beets or in-process beet sugar were produced domestically or imported,

(2) Processor marketings of sugar processed from sugarcane,

(3) Distribution of a processor's allocation to producers in proportionate share States, and

(4) Harvesting sugarcane by producers subject to proportionate shares.

(b) This subpart does not apply to marketing imported raw or refined sugar.

(c) This subpart applies throughout the United States and Puerto Rico.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15365, Apr. 6, 2009]

#### § 1435.301 Annual estimates and quarterly re-estimates.

(a) Not later than August 1 before the beginning of the crop year, CCC will estimate, and make re-estimates as necessary but not later than the beginning of each quarter of such crop year, the:

(1) Quantity of sugar that will be subject to human consumption in the United States during the crop year;

(2) Quantity of sugar that will provide for reasonable carryover stocks;

(3) Quantity of sugar that will be used for human consumption in the United States from carry-in stocks;

(4) Quantity of sugar that will be available from domestically processed sugarcane, sugar beets, and in-process beet sugar; and

(5) Quantity of sugars, syrups, and molasses that will be imported for human consumption or for the extraction of sugar for human consumption

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in the United States and Puerto Rico (other than sugar imported for the production of polyhydric alcohol or to be refined and re-exported in refined form or in sugar-containing products), whether such articles are included in a tariff-rate quota or not.

(b) Calculation of all allotments, allocations, estimates, and re-estimates in this subpart will use available USDA statistics and estimates of production, consumption, and stocks, taking into account, where appropriate, data supplied in reports submitted pursuant to the reporting requirements set forth in § 1435.200.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15365, Apr. 6, 2009]

#### § 1435.302 Establishment of allotments.

(a) By the beginning of the crop year, CCC will establish the overall allotment quantity, beet sugar and cane sugar allotments, State cane sugar allotments, and allocations for processors marketing sugar domestically processed from sugarcane, sugar beets, or in-process beet sugar, whether the sugar beets or in-process beet sugar is domestically produced or imported at a level:

(1) That is sufficient to maintain raw and refined sugar prices above minimum prices to avoid forfeiture of loans to the CCC, but

(2) Not less than 85 percent of estimated quantity of sugar for domestic human consumption for the crop year.

(b) Determinations under this section to establish marketing allotments will be published in the FEDERAL REGISTER and accompanied by a statement of the reasons for the determination.

[74 FR 15365, Apr. 6, 2009]

#### § 1435.303 Adjustment of the overall allotment quantity.

(a) The overall allotment quantity may be adjusted, as CCC determines appropriate, but never to a quantity less than 85 percent of the estimated quantity of sugar for domestic human consumption for the crop year:

(1) To avoid forfeiture of sugar loan collateral to CCC,

(2) Ensure adequate supplies of raw and refined sugar in the domestic market, and,

(3) To reflect changes in estimated sugar consumption, stocks, production, or imports based on re-estimates under § 1435.301.

(b) Determinations to adjust the overall allotment quantity will be published in the FEDERAL REGISTER and accompanied by a statement of the reasons for the determination.

(c) The beet sugar allotment, cane sugar allotment, State cane sugar allotments, proportionate shares, and allocations to each sugar beet processor and sugarcane processor will be increased or decreased, as appropriate, to reflect an overall allotment quantity adjustment.

(d) If the overall allotment quantity is reduced under paragraph (a) of this section and the quantity of sugar and sugar products any individual processor marketed by the time of the reduction exceeds the processor's reduced allocation, the quantity of excess sugar or sugar products marketed will be deducted from the processor's allocation under an allotment next established.

[67 FR 54928, Aug. 26, 2002. Redesignated and amended at 74 FR 15365, Apr. 6, 2009]

#### **§ 1435.304 Beet and cane sugar allotments.**

(a) The allotment for beet sugar will be 54.35 percent of the overall allotment quantity.

(b) The allotment for cane sugar will be 45.65 percent of the overall allotment quantity.

(c) A sugar beet processor allocated a share of the beet sugar allotment may use only beet sugar to fill such allocation. A sugarcane processor allocated a share of the cane sugar allotment may use only cane sugar to fill such allocation.

[67 FR 54928, Aug. 26, 2002. Redesignated at 74 FR 15365, Apr. 6, 2009]

#### **§ 1435.305 State cane sugar allotments.**

(a) Hawaii and Puerto Rico will be allotted a total of 325,000 short tons, raw value, of the cane sugar allotment.

(b) A new entrant cane State will receive an allotment to accommodate a new processor's allocation under 1435.308.

(c) Subject to paragraphs (a) and (b) of this section, the remaining cane

States will be allotted, in aggregate, the remaining cane sugar allotment.

(d) The individual cane State allotments, other than a new entrant cane State, will be based on:

(1) Past marketings of cane sugar,

(2) Past processing of cane sugar, and

(3) The ability to market the sugar covered under the allotment assigned to the State.

(e) Past marketings and past processings will each be weighted by 0.25 and the ability to market will be weighted by 0.50 in determining the States' respective cane sugar allotments. The weights may be adjusted, as CCC deems appropriate, for the crop year.

(f) Except when deficits are reasigned as provided in § 1435.309, a processor may fill an allocation of a cane sugar allotment only with sugar processed from sugarcane grown in the State for which the allotment was established.

[67 FR 54928, Aug. 26, 2002. Redesignated and amended at 74 FR 15365, Apr. 6, 2009]

#### **§ 1435.306 Allocation of marketing allotments to processors.**

(a) Each sugar beet processor's allocation, other than a new entrant's, of the beet allotment will be calculated as the beet processor's share times the beet sector allotment:

(1) A beet processor's share is calculated as the beet processor's adjusted weighted average sugar production divided by the sum of all beet processors' adjusted weighted average sugar production.

(2) A beet processor's weighted average sugar production equals 0.25 times its 1998-crop sugar production plus 0.35 times its 1999-crop sugar production plus 0.40 times its 2000-crop sugar production, with the 2000 sugar PIK payments added to its 2000-crop sugar production.

(3) A beet processor's weighted average sugar production shall be adjusted by the following, as CCC determines:

(i) Increased 1.25 percent of the sum of all beet processors' weighted average sugar production for opening a sugar beet processing factory during the 1996 through 2000 crop years;

(ii) Decreased 1.25 percent of the sum of beet processors' weighted average

sugar production for closing a sugar beet processing factory during the 1998 through 2000 crop years:

(iii) Increased 0.25 percent of the sum of all beet processors' weighted average sugar production for opening a molasses desugarization facility during the 1998 through 2000 crop years; and

(iv) Increased 1.25 percent of the sum of all beet processors' weighted average sugar production for suffering a substantial quality loss on stored beets, as CCC determines, during the 1998 through 2000 crop years.

(b) Each sugarcane processor's, other than a new entrant's, allocation from a State cane sugar allotment will be calculated as the cane processor's share times the State cane sector allotment.

(1) Each cane processor's share will be calculated as the processor's production base divided by the sum of the State's processor production bases.

(2) A processor's production base is the sum of 0.50 times its ability to market plus 0.25 times its past processings plus 0.25 times its past marketings. These weights may be adjusted as CCC deems appropriate for the crop year.

(c) An informal hearing will be held in August of each year, if requested by affected sugarcane processors and growers by July 15th, to afford all interested persons the opportunity to comment on the next crop year's marketing allotments and allocations. After consideration of comments obtained at the hearing, a final determination on cane State allotments and processor allocations will be announced.

(d) During any crop year in which marketing allotments are in effect and allocated to processors, the quantity of sugar and sugar products that a processor markets shall not exceed the quantity of the processor's allocation.

(e) Paragraph (d) of this section will not apply to:

(1) Any sugar marketings to facilitate the export of sugar or sugar-containing products as long as such exports are not eligible to receive credits under reexport programs administered by the Foreign Agricultural Service for refined sugar or sugar-containing products;

(2) Any sugar marketings for nonhuman consumption, except for the

sale of sugar for the production of ethanol or other bioenergy under the Feedstock Flexibility program or the sale of sugar for the production of polyhydric alcohol under the Polyhydric Alcohol program administered by the Foreign Agricultural Service; and

(3) Any processor marketings of sugar to another processor made to enable the purchasing processor to fulfill its allocation if such sales;

(i) Are made before May 1, and

(ii) Reported to CCC within 51 days of the date of sale.

(f) Paragraph (d) of this section also shall not apply to marketings of purchased sugar marketed in the crop year of the purchase, but does apply to marketings of sugar purchased as part of a transaction pursuant to paragraph (e)(3) of this section.

(g) Paragraph (d) of this section also will not apply to the marketing of beet sugar processed from purchased in-process beet sugar if the processor purchased the in-process beet sugar before October 1, 2008.

(h) A sugar beet processor allocated a share of the beet sugar allotment may use only beet sugar to fill such allocation. A sugarcane processor allocated a share of the cane sugar allotment may only use cane sugar to fill such allocation.

[67 FR 54926, Aug. 26, 2002, as amended at 69 FR 39813, July 1, 2004. Redesignated and amended at 74 FR 15365, Apr. 6, 2009]

#### § 1435.307 Transfer of allocation.

(a) If a sugarcane processing facility is sold or transferred to another owner or is closed as part of a corporate consolidation CCC will transfer the allotment allocation to the purchaser or successor.

(b) In proportionate share States, allocations, based on the number of acres of sugarcane base being transferred and the pro rata amount reflecting the grower's contribution to allocation of the processor for the sugarcane base being transferred, will be transferred between facilities if the transfers are based on:

(1) Written consent of the crop-share owners, or their representatives,

(2) Written certification from the processor that will accept the additional sugarcane deliveries that its processing capacity will not be exceeded.

(3) CCC will only consider requests for transfer of allocation submitted during the month of May. The request must include the grower's sugar production history for crop years 1997 through 2003. The facility with the grower's history will be required to certify the history when requested by the grower, and

(4) Allocation transfers will be effective for the next fiscal year after the request is submitted to CCC, that is beginning October 1.

(c) If a sugar beet processing facility or a sugarcane processing facility located in a non-proportionate share State is closed, and the growers that delivered their crops to the closed facility elect to deliver their crops to another processor, the growers may petition the Executive Vice President, CCC, to transfer their share of the allocation from the processor that closed the facility to their new processor. If CCC approves transfer of the allocations, it will distribute the closed facility's allocation based on the contribution of the growers' production history to the closed facility's allocation. CCC may grant the allocation transfer upon:

(1) Written request by a grower to transfer allocation,

(2) Written approval of the processor that will accept the additional deliveries,

(3) Evidence satisfactory to CCC that the new processor has the capacity to accommodate the production of petitioning growers, and

(4) Determinations by the CCC will be made within 60 days after the filing of the petition.

(d) Subject to a transfer of allocation, if any, described in paragraph (c) of this section being completed, CCC will consider a processor to be permanently terminated and eliminate the processor's remaining allocation and distribute it to all other processors on a pro-rata basis when the processor:

(1) Has been dissolved,

(2) Has been liquidated in a bankruptcy proceeding,

(3) Has not processed sugarcane or sugar beets for 2 consecutive crop years,

(4) Has notified CCC that the processor has permanently terminated operations, or

(5) Has been determined by CCC to have permanently terminated operations.

(e) If a processor of beet sugar purchases all the assets of another processor, then CCC will immediately transfer allocation commensurate with the purchased facilities' production history, unless the allocation has already been transferred under paragraph (d) of this section.

(f) If a processor of beet sugar purchases some, but not all, of the assets of another processor, then CCC will assign a pro rata portion of the allocation to the buyer to reflect the historical contribution of the sold facilities, unless the buyer and seller have agreed upon a different allocation amount.

(1) The assignment of the allocation will apply to the crop year in which the sale occurs and for each subsequent year.

(2) The buyer of the facilities as specified in paragraph (e) of this section may fill the assigned allocation with production from other facilities it owns if the purchased facilities lack the production to fill the assigned allocation.

[74 FR 15366, Apr. 6, 2009]

#### § 1435.308 New entrants.

(a) The Secretary may assign a new entrant sugarcane processor an allocation that provides a fair, efficient, and equitable distribution of allocations:

(1) Applicants must demonstrate their ability to process, produce, and market sugar for the applicable crop year,

(2) CCC will consider any adverse effects of the allocation upon existing processors and producers,

(3) CCC will conduct a hearing on a new entrant application if an interested processor or grower requests a hearing,

(4) A new entrant's allocation is limited to no more than 50,000 short tons, raw value, for the first crop year, and

(5) A new entrant will be provided, as determined by CCC:

(i) A share of its State's cane allotment if the processor is located in Hawaii, Florida, Louisiana, or Texas or

(ii) A share of the overall mainland cane allotment if the processor is located in any mainland State not listed in paragraph (a)(5)(i) of this section.

(b) For proportionate share States, CCC will establish proportionate shares for the sugarcane required to fill the allocation.

(c) If a new entrant beet processor constructs a new facility or reopens a facility that currently has no allocation, but last produced beet sugar from sugar beets and sugar beet molasses prior to the 1998 crop year, CCC will:

(1) Assign an allocation to the new entrant to enable it to achieve a facility utilization rate comparable to other similarly-situated sugar beet processors and

(2) Reduce all other beet processor allocations by a like amount on a pro rata basis.

(d) If a new entrant acquires an existing facility with production history that processed sugar beets for the 1998 or subsequent crop year, CCC will:

(1) Assign the allocation to the buyer to reflect the historical contribution of the sold facilities, unless the buyer and seller have agreed upon a different allocation amount, or

(2) If the new entrant and the processor holding the allocation of the existing facility cannot agree on an allocation amount, the new entrant will be denied a beet sugar allocation.

[74 FR 15366, Apr. 6, 2009]

**§ 1435.309 Reassignment of deficits.**

(a) CCC will determine, from time to time, whether sugar beet or sugarcane processors will be unable to market their allocations.

(b) Sugar beet and sugar cane processors will report to CCC current inventories, estimated production, expected marketings, and any other pertinent factors CCC deems appropriate to determine a processor's ability to market their allocation.

(c) If CCC determines a sugarcane processor will be unable to market its full allocation for the crop year in which an allotment is in effect, the deficit will be reassigned as follows:

(1) First, to allocations of other sugarcane processors within that State based on each processor's initial allocation share of the State's allotment, but no processor may receive reassigned allocation such that its allocation exceeds its estimated total sugar supply.

(2) If the deficit cannot be eliminated after reassignment within the same State, be reassigned to the other cane States based on each State's initial share of the cane sugar allotment, but no State may receive reassigned State allotment such that its allocation exceeds its estimated total sugar supply, with the reassigned quantity to each State being allocated according to paragraph (c)(1) of this section.

(3) If the deficit cannot be eliminated by paragraphs (c)(1) and (c)(2) of this section, be reassigned to CCC. CCC shall sell such quantity from inventory unless CCC determines such sales would have a significant effect on the sugar price.

(4) If any portion of the deficit remains after paragraphs (c)(1), (c)(2), and (c)(3) of this section have been implemented, be reassigned to imports of raw cane sugar.

(d) The initial estimate of the sugarcane deficit will be reassigned by June 1. CCC will conduct later reassignments if CCC determines, after June 1, that a sugarcane processor will be unable to market its full allocation.

(e) If CCC determines that a sugar beet processor is unable to market its full allocation for the crop year in which an allotment is in effect, the deficit will:

(1) First, be reassigned proportionately to allocations of other sugar beet processors, depending on the capacity of other processors to fill the portion of the deficit to be reassigned to them, accounting for the interests of associated producers.

(2) If the deficit cannot be eliminated by paragraph (e)(1) of this section, be reassigned to CCC. CCC shall sell such quantity from inventory unless CCC determines such sales would have a significant effect on the sugar price.

(3) If any portion of the deficit remains after paragraphs (e)(1) and (e)(2) of this section have been implemented,

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be reassigned to imports of raw cane sugar.

(f) The crop year allocation of each sugar beet or sugarcane processor who receives a reassignment will be increased accordingly for that year.

[67 FR 54928, Aug. 26, 2002, as amended at 69 FR 55063, Sept. 13, 2004; 69 FR 58037, Sept. 29, 2004; 70 FR 28181, May 17, 2005; 74 FR 15366, Apr. 6, 2009]

### § 1435.310 Sharing processors' allocations with producers.

(a) Every sugar beet and sugarcane processor must provide CCC a certification that:

(1) The processor intends to share its allocation among its producers fairly and equitably, and in a manner adequately reflecting each producer's production history, and

(2) The processor has, in the previous allotment year, shared its allocation among producers fairly and equitably, reflecting each producer's production history. If a processor is unable to provide such certification, CCC may reduce or eliminate its marketing allocation.

(b) CCC will determine that a processor in a proportionate share state has met the conditions of paragraph (a) of this section if the processor establishes a grower payment plan that incorporates the following provisions:

(1) Pays growers for sugar from their delivered sugarcane in the following priority:

(i) Sugar production from proportionate share acreage; as established under §1435.311, for producers determined by CCC, who;

(A) Delivered to the mill in at least one of the crop years 1999, 2000, or 2001, or

(B) Obtained an allocation transfer from a predecessor mill,

(ii) Sugar production from base acreage, as established under §1435.312, but exclusive of the acreage described in paragraph (b)(1)(i) of this section, for producers who meet the requirements of paragraph (b)(1)(i) of this section, then

(iii) All other sugar production.

(2) In determining the payment priority, a processor may aggregate the acreage of an operator (producer making the crop production decisions)

across all the operator's farms delivering cane to the processor.

(c) CCC will determine that a processor not in a proportionate share state, which is cooperatively owned by producers, has met the conditions of paragraph (a) of this section if the processor shares its allocation with its producers according to its cooperative membership agreement.

(d) CCC will disclose farm base and reported acres data in a proportionate share state to processors upon their request for growers delivering to their mill. In the case of multiple producers on a farm or growers delivering to more than one mill, subject mills will be responsible for coordinating proportionate share data.

(e) Any producer or processor may request arbitration of a dispute regarding the sharing of the processor's allocation among the producers. Arbitration will be available on behalf of CCC at the State FSA office for the State in which the processor is located. Subsequent review of the arbitration decision is available at the discretion of the Executive Vice President, CCC. Any arbitration is subject to appeal to the Office of the Administrative Law Judge, USDA.

[67 FR 54926, Aug. 26, 2002, as amended at 69 FR 39813, July 1, 2004; 74 FR 15366, Apr. 6, 2009]

### § 1435.311 Proportionate shares for sugarcane producers.

(a) Proportionate shares and the provisions of this section and §§1435.312 through 1435.316 apply only to Louisiana sugarcane farms.

(b) CCC will determine whether Louisiana sugar production, in the absence of proportionate shares, will exceed the quantity needed to enable processors to fill the State cane sugar allotment and provide a normal carryover inventory. If the determination is made that the quantity of sugar produced in Louisiana, plus a normal carryover inventory, will exceed the State's allotment, CCC will establish for each sugarcane producing farm a proportionate share that limits the sugarcane acreage that may be harvested on the farm for sugar or seed.

(c) For purposes of determining proportionate shares CCC will:



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(1) Establish the State's per-acre yield goal at a level not less than the average per-acre yield in the State for the 2 highest years from among the 1999 through 2001 crop years;

(2) Adjust the per-acre yield goal by the State average recovery rate;

(3) Convert the State cane sugar allotment into a State acreage allotment by dividing the State allotment by the adjusted per-acre yield goal;

(4) Establish a uniform reduction percentage for the crop by dividing the State acreage allotment by the sum of all adjusted acreage bases in the State as determined under § 1435.312; and

(5) Apply the uniform reduction percentage to the acreage base established for each sugarcane producing farm in the State to determine the farm's proportionate share of sugarcane acreage that may be harvested for sugar or seed.

#### § 1435.312 Establishment of acreage bases under proportionate shares.

(a) CCC will establish a sugarcane crop acreage base for each farm subject to proportionate shares as the simple average of the acreage planted and considered planted for harvest for sugar or seed (meaning only those varieties dedicated to the production of sugarcane to produce sugar for human consumption) on the farm in the 2 highest of the 1999 through 2001 crop years. Acreage considered planted shall be determined under § 1435.315.

(b) In establishing crop acreage bases, CCC will:

(1) Not consider acreage prevented from planting, and

(2) Consider acreage planted to sugarcane that fails.

(c) In establishing crop acreage bases, CCC will allow producers who have not previously reported their sugarcane acreage to do so by a date CCC determines and announces. Late-filed acreage reports will be accepted as the Deputy Administrator determines appropriate.

(d) The farm's crop acreage base shall be used to determine the farm's proportionate share.

(e) The regulations at part 718 of this title shall apply to this subpart, except reconstitution of farms with a sugar

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crop acreage base shall not be allowed across State lines.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15367, Apr. 6, 2009]

#### § 1435.313 Permanent transfer of acreage base histories under proportionate shares.

(a) A sugarcane producer on a farm may transfer all or a portion of the producer's acreage base history of land owned, operated, or controlled to any other farm in the State that the producer owns, operates, or controls under the Deputy Administrator-issued instructions. The transfer will reduce permanently the transferring farm's sugarcane acreage base history and increase the receiving farm's crop acreage base.

(1) All farm owners must agree in writing to the transfer.

(2) Producers may transfer sugarcane acreage base histories under this section by the date the State FSA committee establishes annually.

(b) Sugarcane acreage base that has been converted to nonagricultural use on or before May 13, 2002, may be transferred to other land suitable for the production of sugarcane under the following terms:

(1) CCC must notify 1 or more affected landowners within 90 days of becoming aware of the conversion, of their rights to transfer the base to 1 or more farms owned by the landowner;

(2) The landowner has 90 days from the date the landowner was notified to transfer the base;

(3) If the landowner does not exercise this transfer right, the grower of record will have 90 days after being notified by CCC to transfer the base to 1 or more farms owned by the grower;

(4) If the transfers as specified under paragraphs (b)(2) or (3) of this section are not accomplished during the specified periods, FSA county committee will place the base into a pool for possible reassignment to other farms;

(5) After providing notice to farm owners, operators and growers of record in the county, the committee will accept requests from farm owners, operators, and growers in the county;

(6) The county committee will assign the base to other sugarcane farms in

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the county that are eligible and capable of accepting the acreage base, based on a random drawing among requests received under paragraph (b)(5) of this section;

(7) Any unassigned base will be made available to the State FSA committee and be allocated to remaining FSA county committees in the State representing counties with farms eligible for assignment of the base, based on a random drawing; and

(8) After the acreage base has been reassigned, the acreage base will remain on the farm and subject to the transfer provisions of paragraph (a) of this section.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15367, Apr. 6, 2009]

### § 1435.314 Temporary transfer of proportionate share due to disasters.

(a) If, for reasons beyond the control of a producer on a farm, such producer is unable to harvest sugarcane acreage relative to all or a portion of the proportionate share established for the farm, the Secretary may preserve, on producer application and written consent of all owners of the farm, for a period of not more than 5 consecutive years, the acreage base history of the farm to the extent of the proportionate share involved.

(b) Such proportionate share may be transferred, with the written consent of all owners of the farm, for 1 crop year to other farm owners or operators subject to the following conditions:

(1) The acreage base history of the transferring farm will be preserved for a period from 1 to 5 years; and

(2) Acreage base history will not be increased on the receiving farm.

(c) Producers who transfer a proportionate share under this section will be required to:

(1) Initiate the transfer in the county FSA office where the proportionate shares are established; and

(2) Obtain approval from the transferring county FSA committee.

(d) All transfers made under this section must be completed by the date the State FSA committee establishes.

### § 1435.315 Adjustments to proportionate shares.

Whenever CCC determines that, because of a natural disaster or other condition beyond the control of producers adversely affecting a sugarcane crop, the amount of sugarcane produced by producers subject to proportionate shares will not be sufficient to enable state processors to produce sufficient sugar to meet the State's cane sugar allotment and provide a normal carryover of sugar, CCC may uniformly allow producers to harvest sugarcane in excess of their proportionate shares, or suspend proportionate shares entirely.

### § 1435.316 Acreage reports for purposes of proportionate shares.

(a) A report of planted and failed acreage shall be required on farms that produce sugarcane for sugar or seed. Such report shall also specify the total acreage intended for harvest for sugar and seed.

(b) The reports required under paragraph (a) of this section shall be on forms prescribed by CCC and shall be filed annually with the county FSA committee by the applicable final reporting date CCC establishes. The farm operator or farm owner shall file such reports.

(c) Acreage reports will be used to determine compliance with proportionate shares and acreage bases for future proportionate shares.

(d) An acreage report may be accepted after the established date for reporting if physical evidence is still available for inspection that may be used to make a determination relative to:

(1) Existence of the crop;

(2) Use made of the crop;

(3) Lack of crop; or

(4) Disaster condition affecting the crop.

(e) The farm operator shall pay the cost of a farm visit by an authorized FSA employee unless the county FSA committee has determined that failure to report in a timely manner was beyond the producer's control.

(f) The farm operator may revise an acreage report. Revised reports shall be filed in accordance with CCC instructions and shall be accepted at any time if:

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(1) Evidence exists for inspection and determination of:

- (i) Existence of the crop;
- (ii) Use made of the crop;
- (iii) Lack of crop; or
- (iv) Disaster condition affecting the crops.

(2) The farm has not already been inspected and the acreage already determined or harvesting of sugarcane already begun.

(g) Provisions of part 718 of this chapter will apply for field inspections, tolerance, and variance. Assessments for false acreage reporting will be applied under § 1435.318.

### § 1435.317 Revisions of allocations and proportionate shares.

The Executive Vice President, CCC, may modify any processor's allocation or any producer's proportionate share on the same basis as the initial allocation or proportionate share was required to be established.

### § 1435.318 Penalties and assessments.

(a) Any sugar beet or sugarcane processor who knowingly markets sugar or sugar products in excess of the processor's allocation will be liable to CCC for a civil penalty in an amount equal to 3 times the U.S. market value, at the time the violation was committed, of that quantity of sugar involved in the violation.

(b) CCC may assess liquidated damages, as specified in a surplus allocation survey and agreement, with respect to a surplus allocation still existing after the end of a crop year if the processor had a surplus allocation because the processor provided incomplete or erroneous information to CCC.

(c) Under § 359f(c)(5) of the Agricultural Adjustment Act of 1938, as amended, any producer of sugarcane whose farm has a proportionate share, and who knowingly harvests or allows to be harvested an acreage of sugarcane for sugar or seed in excess of the farm's proportionate share shall pay to CCC a civil penalty in an amount equal to 1.5 times the U.S. market value of the quantity of sugar that is marketed by the processor of such sugarcane in excess of the allocation of such processor, for the year in which the violation was committed. However, civil

penalties will not be assessed when the producer harvests acreage for sugar or seed in excess of the farm's proportionate share, if the excess sugarcane harvested is:

(1) Processed by a sugarcane processor that does not exceed its marketing allocation; or

(2) Diverted to a use other than sugar or seed if:

(i) The sugarcane producer requests and pays for a CCC field inspection, and

(ii) CCC verifies the disposition of the excess harvest is not for sugar or seed.

(d) Any penalty assessed under paragraph (b) of this section shall be prorated among the producers of all sugarcane acquired by the processor from excess acres.

(e) Any person filing a false acreage report that exceeds tolerance will be subject to an assessment not to exceed \$10,000. Whenever the failure of a producer to comply fully with the terms and conditions applicable to proportionate shares would result in an assessment, the Deputy Administrator may authorize the waiver or reduction of the assessment in such amounts as determined to be equitable about the seriousness of the failure, the producer's good-faith effort to comply fully with such terms and conditions, and the producer's substantial performance.

(f) Any person who knowingly violates any provision of this subpart other than paragraph (d) of this section is subject to the assessment of a civil penalty by CCC of not more than \$5,000 for each violation.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15367, Apr. 6, 2009]

### § 1435.319 Appeals and arbitration.

(a) A person adversely affected by any determination made under this subpart may request reconsideration of such determination by filing a written request with the Executive Vice President, CCC, detailing the basis of the request within 10 days of such determination. Such a request must be submitted at: Executive Vice President, CCC, Stop 0501, 1400 Independence Ave., SW, Washington, DC 20250-0501.

(b) For issues arising under section 359d establishing allocations for marketing allotments, and sections 359f(b)

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and (c), and section 359i of the Agricultural Adjustment Act of 1938, as amended, after completion of the process provided in paragraph (a) of this section, a person adversely affected by a reconsidered determination may appeal such determination by filing a written notice of appeal within 20 days of the issuance of the reconsidered determination with the Hearing Clerk, USDA, Room 1081, South Building, 1400 Independence Ave., SW., Washington, DC 20250-9200. Any hearing conducted under this paragraph shall be in accordance with instructions issued by USDA's Judicial Officer.

(c) For issues arising under §§ 359a-359c, 359e, and 359g of the Agricultural Adjustment Act of 1938, as amended, after completion of the process provided in paragraph (a) of this section, a person adversely affected by the reconsidered determination may appeal such determination by filing a written notice of appeal with the Director, National Appeals Division, USDA, as provided in part 11 of this title. For issues arising under § 359f(a) of the Agricultural Adjustment Act of 1938, as amended, such disputes shall be resolved through arbitration under the direction of the Executive Vice President, CCC. A request for arbitration must be filed in writing at the address specified in paragraph (a) of this section.

[67 FR 54926, Aug. 26, 2002, as amended at 69 FR 39814, July 1, 2004]

### Subpart E [Reserved]

### Subpart F—Processor Sugar Payment-In-Kind (PIK) Program

SOURCE: 67 FR 54928, Aug. 26, 2002, unless otherwise noted. Redesignated at 74 FR 15367, Apr. 6, 2009.

#### § 1435.500 General statement.

This subpart shall be applicable to sugar beet and sugarcane processors throughout the United States who, acting in conjunction with the producers of the sugarcane or sugar beets processed by the processors, reduce sugar production in return for a payment of sugar from CCC when CCC determines that such action will reduce forfeitures

of sugar pledged as collateral for a CCC loan.

[67 FR 54928, Aug. 26, 2002. Redesignated at 74 FR 15367, Apr. 6, 2009]

#### § 1435.501 Bid submission procedures.

(a) After announcement by CCC that a program authorized by this subpart is in effect, processors who desire to participate in the program must submit a bid to CCC, on a form prescribed by CCC, that specifies:

(1) For a program involving acreage diversion, the amount of acreage to be reduced by producers who have contracts for delivery of sugar beets or sugar cane to the processor and contains the information CCC determines necessary to conduct the program and includes but is not limited to:

(i) The number of acres that the processor, acting in conjunction with the producers, will divert;

(ii) The previous consecutive 3-year simple average sugar beet or sugarcane yield on that acreage while under contract (years with no production contracted with a producer will not be considered (for first-time producers, however, the previous consecutive 3-year simple average sugar beet or sugarcane yield for all the producers under contract who delivered to the applicable factory will be used);

(iii) The previous 3-year simple average sugar content of the producer's beets or sugarcane (for first-time producers, the previous 3-year simple average sugar content for all beets or cane delivered to that factory will be used);

(iv) The processor's previous 3-year simple average recovery rate (for processors that have not been fully operational during the last 3 years, the simple average for those years that they were fully operational);

(v) The value of CCC sugar to be received as payment; and

(vi) Other information CCC deems necessary for program administration; or

(2) The sugar production capacity to be removed from production by the processor.

(b) The following acreage is ineligible for enrollment in the PIK program:

(1) If planted, acreage not currently under contract for delivery of sugar

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beets to a sugar beet processor or sugarcane to a sugarcane processor for sugar production.

(2) If planted, acreage that is not harvestable,

(3) Acreage devoted to roads or other non-producing areas, or

(4) If planted, acreage on which a crop insurance indemnity or replant payment was received for the current crop or for which a claim has been, or will be, filed to receive a crop insurance indemnity or replant payment for the current crop, except for replant payments for acreage actually replanted before the end of the normal planting period.

(c) If planted, the diverted acres cannot be grazed until after the sugar beets or sugarcane are destroyed by disking, plowing, or other means of mechanical destruction. In addition, the sugar beets or sugarcane on the diverted acres may not be used for any commercial purpose.

(d) The acreage offered must meet the following requirements:

(1) If less than or equal to 15 acres, then the acreage bid must consist of one of the following:

(i) One contiguous area of land,  
(ii) One or more entire permanent fields, or

(iii) One or more entire permanent fields and one contiguous area of land to complete the balance;

(2) If more than 15 acres, then the acreage bid must consist of one of the following:

(i) One or more areas of land of at least 15 contiguous acres each with one remaining area of land of less than 15 contiguous acres to complete the balance,

(ii) One or more entire permanent fields, or

(iii) One or more entire permanent fields and one area of contiguous land to complete the balance.

(3) Contiguous areas of land must have a minimum width of 3 chains (198 feet).

(e) For a program involving desugaring capacity, or other measures of sugar production, not involving acreage diversion, the bid must contain

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the information CCC determine necessary to conduct the program.

[67 FR 54928, Aug. 26, 2002. Redesignated at 74 FR 15367, Apr. 6, 2009]

### § 1435.502 Bid selection procedures.

(a) For bids in which the processor offers to remove acreage of sugar beets or sugarcane from production, CCC will rank bids on the basis of the bid amount as a percentage of the expected sugar produced from the retired acreage. Bids with the lowest of such percentages will be selected first. In the case of identical bids, selection may be based on random selection or pro rata shares, as CCC deems appropriate.

(b) CCC will reject bids for which the bid amounts exceed the expected sugar produced from the retired acreage.

(c) For bids in which the processor offers to remove sugar production capacity from production, CCC will rank the bids on the basis of the capacity to be removed from production.

(d) All acceptable bids specified in paragraphs (a) and (c) of this section will be further reviewed by CCC and ranked in order of the greatest reduction in sugar program that can be achieved at the lowest cost to CCC.

[67 FR 54928, Aug. 26, 2002. Redesignated at 74 FR 15367, Apr. 6, 2009]

### § 1435.503 In-kind payments.

(a) CCC will, through such methods as CCC deems appropriate, make payments in the form of sugar held in CCC inventory.

(b) To the maximum extent practicable, CCC will use its inventory in making an in-kind payment based on the following priority:

(1) CCC-owned sugar held in storage by the processor;

(2) CCC-owned sugar held in storage by any other processor in the same region as the producer;

(3) CCC-owned sugar held in storage by any other processor that is not in the same region as the producer; and

(4) CCC-owned sugar held in storage anywhere in the United States, if CCC determines that such sugar is eligible to be used for in-kind payments.

(c) The value of CCC-owned inventory is dependent upon the storage location of the sugar and the type of sugar (raw

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or refined). CCC will announce the value of its inventory before bid solicitation. Accordingly, the quantity of sugar CCC will provide in terms of an in-kind payment to a processor will be determined by dividing:

(1) The total of the processor's bid amount that CCC accepts, by

(2) The value of CCC's inventory at the storage location at which title will transfer from CCC to the processor.

[67 FR 54928, Aug. 26, 2002. Redesignated at 74 FR 15367, Apr. 6, 2009]

### § 1435.504 Timing of distribution of CCC-owned sugar.

Distribution of sugar from CCC inventory will occur in such manner as CCC determines appropriate.

[67 FR 54928, Aug. 26, 2002. Redesignated at 74 FR 15367, Apr. 6, 2009]

### § 1435.505 Miscellaneous provisions.

(a) CCC may permit processors to bid, in lieu of acreage, desugarizing capacity or other measures of sugar production as CCC determines.

(b) The contract shall provide for the payment of liquidated damages if a processor fails to comply with the obligations specified in the CCC production diversion contract.

(c) CCC will transfer title of the sugar to the processor by notifying the processor or assignee that the sugar is available. CCC will stop storage payments on this sugar on the date of transfer.

[67 FR 54928, Aug. 26, 2002. Redesignated at 74 FR 15367, Apr. 6, 2009]

## Subpart G [Reserved]

## PART 1436—FARM STORAGE FACILITY LOAN PROGRAM REGULATIONS

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AUTHORITY: 7 U.S.C. 7971 and 8789; and 15 U.S.C. 714-714p.

SOURCE: 66 FR 4612, Jan. 18, 2001, unless otherwise noted.

### § 1436.1 Applicability.

The regulations of this part provide the terms and conditions under which CCC may provide low-cost financing for producers to build or upgrade on-farm storage and handling facilities. Because liens and security interests related to this activity may be governed by State law, CCC may adapt certain procedures relating to those issues that may vary between States.

[66 FR 4612, Jan. 18, 2001, as amended at 74 FR 41587, Aug. 18, 2009]

### § 1436.2 Administration.

(a) The Farm Storage Facility Loan Program will be administered under the general supervision of the Executive Vice President, CCC or designee and will be carried out in the field by FSA State committees, FSA county committees and FSA employees.

(b) FSA State committees, FSA county committees and FSA employees, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The FSA State committee will take any action required by these regulations that has not been taken by the county committee. The FSA State committee will also:

(1) Correct, or require the FSA county committee to correct, any action taken by such FSA county committee that is not in accordance with the regulations of this part; and

(2) Require the FSA county committee to withhold taking any action